

D. ATTALI

1 MR. SINGLETON: No. We're done.

2 MR. BELLISTRI: Is that okay that he asked the
3 question? Is that all right? That's permissible?

4 MR. SINGLETON: He was not commenting on the
5 content of the witness' testimony.

6 MR. BELLISTRI: Okay.

7 MR. SINGLETON: And there is a difference, and
8 you understand that --

9 MR. BELLISTRI: It wasn't a comment. It was a
10 question, sir.

11 BY MR. SINGLETON:

12 Q. Who is Michael Frigedis?

13 A. I believe it's pronounced Frigedis. He was an
14 officer that I worked with at the 67th Precinct.

15 Q. And did he make any anti-Semitic comments or
16 remarks?

17 A. Yes. He used to use my ring tone, when I
18 would call his phone, as Hitler giving a speech. So if
19 I'd call him, his ring tone would go off, and Hitler
20 would be screaming in German.

21 Q. Did you have his cell phone number?

22 A. Now, no, because I haven't seen him since.

23 Q. No. At the time when you were in the 67th.

24 A. Yeah. Yeah.

25 Q. And did you work with him? Did you have a

D. ATTALI

1 tour with him?

2 A. Yes. Well, again, I was on my own tour
3 because of the accommodations, but the squads rotate.
4 You, eventually, work with everybody. They would have a
5 different schedule than me, but, eventually, it rotates
6 the days that they work.

7 Q. Well, in the 67, how many officers did you
8 work with, have a working relationship with?

9 A. I have no idea. I can't give you a number.

10 Q. More than ten?

11 A. I just don't recall back then.

12 Q. Did you have all of their cell phone numbers?

13 A. I don't know.

14 Q. Did he give you his cell phone number for --
15 is it your testimony that he gave you his cell phone
16 number so that you would call him just to get -- just to
17 listen to an anti-Semitic remark?

18 MR. AVALLONE: Note my objection.

19 A. No. I would call him to, you know, whatever
20 had to do with work, you know, "Got a color. Come
21 here," or, "You're going to that job," or whatever it
22 was.

23 Q. You say he had an anti-Semitic ring tone on
24 his phone, correct?

25 A. Yes.

D. ATTALI

1 Q. And do you think he had that -- put it on his
2 cell phone for you, or he was just a racist?

3 A. Oh, he put it specifically for my number,
4 because you could call him and it wouldn't go off, the
5 Hitler speech. But if I'd call, it would go off.

6 Q. How do you know it wouldn't go off if someone
7 else called?

8 A. Because I used to stand there and see him, you
9 know, answer the phone, and it was just the regular --
10 well, I won't say regular ring, but not a voiceover of
11 Hitler, which I assume was Hitler.

12 Q. You mean if you called him -- you were present
13 when you called him and heard his phone ringing and it
14 would answer with some kind of Hitler ring tone?

15 A. Yeah, I believe so.

16 Q. You believe so?

17 A. Yeah. Yeah.

18 Q. Did you say anything to him, call him out?

19 A. I don't remember.

20 Q. Make any complaint to anyone?

21 A. No, I do not think so.

22 Q. You got a commendation when you were in the
23 67, correct?

24 A. For what? The Saturday thing?

25 Q. What's the Saturday thing?

D. ATTALI

1 A. To get off, you know, Friday night?

2 MR. AVALLONE: Did you say commendation or
3 accommodation?

4 MR. SINGLETON: Commendation.

5 Q. Do you remember getting a meritorious police
6 duty recognition while you were in the 67?

7 A. Yes.

8 Q. And what was that for?

9 A. I got two types of -- I believe I got two
10 types of awards. What they were specifically called, I
11 don't remember. Maybe that is the name of it. What I
12 believe you're referring to is a fire rescue.

13 Q. Can you tell me a little bit more?

14 A. Of the incident itself?

15 Q. Yeah.

16 A. I don't remember the building or the address
17 exactly, but there was -- there was a fire in the
18 building or should I say it was smoking like crazy.
19 Didn't see the flames. And the entrance level of the
20 building -- so it would be the first floor -- there was
21 a day care that I don't remember what side of the
22 building it was on.

23 So at that point, we notified FD and we were
24 knocking on doors to get residents out. At that point,
25 it was smoking very heavily. So at a certain point -- I

D. ATTALI

1 don't remember if it was a second or a third floor -- I
2 had knocked on a door because I thought I heard a girl.
3 And a young girl opened up. She was living with her
4 grandfather.

5 And at that point, when I said, "Hurry up.
6 Get out of the building," by the time I turned around to
7 get out of the apartment, the hallways were pitch black.
8 You could literally not breathe. You could not see your
9 finger and your face. And then we went to -- I don't
10 remember which -- one of their bedrooms. I'm pretty
11 sure I smashed the window, and we got out of the fire
12 escape as the apartment was filling up with the black
13 smoke. And then at that point, once they got down, I
14 believe I escorted them to an ambulance, and that was
15 the last I ever saw of them.

16 Q. Did anyone else in the 67 discriminate against
17 you?

18 A. No.

19 Q. Anyone else at 70 discriminate against you?

20 A. No.

21 Q. Now, in response to Interrogatory No. 6, it
22 says, "Identify all persons who discriminated against
23 you." And your answer is, "All defendants and
24 P.O. Frigedis"?

25 A. Yes.

D. ATTALI

1 Q. You don't mean all defendants; you just mean
2 all the police officer defendants, correct?

3 A. The police officers from the World Trade
4 Center Command, yes.

5 Q. Well, you were only at three commands,
6 correct?

7 A. Yeah.

8 Q. You were at 67, 70 --

9 A. Yeah.

10 Q. So you mean only the police officer
11 defendants, correct?

12 A. Yes, the ones that we have listed, that we're
13 discussing today, yes.

14 Q. Right. But you've also sued Deputy Inspector
15 Burke, correct?

16 A. Okay.

17 Q. You don't mean Deputy Inspector Burke, do you?

18 A. I'm sorry. Say again.

19 Q. You don't mean that Deputy Inspector Burke
20 discriminated against you, do you?

21 A. No. He's never made any remarks to me, no.

22 Q. When you say "all defendants," you don't mean
23 Lieutenant Chang, do you?

24 A. Well, Lieutenant Chang, you know, was present
25 during some of the stuff that they were saying to me,

D. ATTALI

1 but never participated, as in added on a comment.

2 Q. Never made a comment?

3 A. No. Never made a comment to me.

4 Q. You just believe he overheard comments?

5 A. Oh, yeah. Yes.

6 Q. As you believe Christina Payne and Mergeche
7 and --

8 A. Yes.

9 Q. -- all the other officers on the first platoon
10 overheard remarks?

11 A. Yes.

12 Q. And I'm correct that your answer would be the
13 same for Sergeant Porcelli?

14 A. Yes.

15 Q. And for Sergeant Santana?

16 A. Yes.

17 Q. Meaning that those supervisory officers never
18 personally made any discriminatory remarks toward you?

19 A. No. They never have, but they were present
20 for many.

21 Q. And is it your testimony that Deputy Inspector
22 Burke was present for many or any?

23 A. No.

24 Q. He wasn't present for any?

25 A. He was not present for any.

D. ATTALI

1 Q. With respect to the recordings that you made,
2 did you only use one phone to do it or did you have --
3 did they carry over a period of time such that you had
4 different phones?

5 A. Excuse me. The recordings, I only made with
6 one phone.

7 Q. And so we were talking about the layout --

8 A. Yes.

9 Q. -- of the exterior of the World Trade Center
10 Command. You come through a security gate, and then you
11 can either go up the stairs and enter the command where
12 the forward operating desk is, correct?

13 A. Yes.

14 Q. Or you can enter on the ground level and go
15 into the locker room?

16 A. Yes. Under the stairway that goes up to FOD,
17 there was another entrance straight to the locker room,
18 but that door, you can only come out of.

19 Q. You couldn't enter that way?

20 A. No. Not unless it was already open, then you
21 couldn't get in there. You would have to just come out.
22 Unless someone left it open, then you could get in.

23 Q. In your experience, could you walk up and tap
24 on the door and see if someone would open it for you?

25 A. I suppose.

D. ATTALI

1 Q. Did you ever do that?

2 A. Possibly. I don't recall.

3 Q. But that door goes into the large men's locker
4 room where your locker was located?

5 A. Yes.

6 Q. Now, you say that people -- unknown people
7 posted anti-Semitic material on your locker, correct?

8 A. Yes.

9 Q. When did that first happen, to your
10 recollection?

11 A. A specific date, I don't know. Like, the
12 first time I saw it, did I know what date it was? No, I
13 don't know.

14 Q. Well, you started in July of 2011, and you
15 think Delbrocolo came in September of 2011?

16 A. Yes.

17 Q. Did it start almost immediately after he
18 joined the command?

19 A. I don't remember.

20 Q. Did it happen before he joined the command?

21 A. Well, I think he joined the command at the
22 same time as everyone else. I just...

23 Q. Oh, you just didn't know him?

24 A. I just didn't know him until we was put on the
25 midnights together.

D. ATTALI

1 Q. Because you were going through training?

2 A. Yes. So everybody, you know, was just put in
3 one room.

4 Q. Did you get any training outside of New York?

5 A. No.

6 Q. I mean, did you ever go someplace for
7 additional training?

8 A. No.

9 Q. So your attorney has produced three recordings
10 of conversations that are described as having occurred
11 outside of the command.

12 A. Okay.

13 Q. Do you know who put those descriptions on the
14 recordings? Did you put the descriptions?

15 A. I don't know, because I don't know which
16 recordings we're talking about.

17 Q. Do you recall making the recordings, whether
18 it was on the stairwell or --

19 A. The stairway one, yeah.

20 Q. You do recall making that one?

21 A. Yeah. That one, I remember.

22 Q. Tell me about that one.

23 A. That one, I was outside -- right outside of
24 the FOD having a cigarette, and there was Sergeant
25 Santana, Sergeant Porcelli, Delbrocolo, and I don't

D. ATTALI

1 remember who else was there.

2 Q. Was this beginning of tour, end of tour?

3 A. I don't remember.

4 And I just remember Delbrocolo -- sergeants
5 were having a conversation, and he just said something
6 about going back to the 30s to shake Hitler's hand.

7 Q. So you're saying the sergeants were talking
8 between themselves?

9 A. Yeah.

10 Q. And then one of the officers said something?

11 A. Mm-hmm. Yes. When you're standing on the
12 stairway, it was the size of this, you know, square of
13 the table. They're all standing right there on the top
14 platform.

15 MR. GARBER: Four by four, approximately?

16 Five by four?

17 THE WITNESS: Four by four.

18 BY MR. SINGLETON:

19 Q. So what did you do? Where was your phone?
20 Was it in your pocket? Was it in your hand?

21 A. I don't remember where exactly my phone was.

22 Q. Well, I'm just trying to understand how it
23 came about that you were able to record this
24 conversation on your phone. Did you say, "Wow, there is
25 a comment. Let me get my phone out," or what? How did

D. ATTALI

1 it happen?

2 A. I just don't remember. I don't remember if it
3 was in my pocket or my hand. I just don't remember.

4 Q. And when in relation to your filing a
5 complaint with the OEEO of the police department did you
6 record this conversation?

7 A. Well, I made the complaint in May.

8 Q. Of 2014?

9 A. May of 2014. When I made the recording, I
10 don't remember the date.

11 Q. Why did you make this recording?

12 A. Why I made that specific recording?

13 Q. Yes.

14 A. I don't recall what was going through my mind
15 at the time.

16 Q. Did you play it for your wife?

17 A. No.

18 Q. Did you play it for anybody, besides your
19 attorneys?

20 A. No.

21 Q. Was it accidental that you recorded it or was
22 it intentional?

23 A. I don't recall.

24 Q. Did you always know you had that recording?

25 A. Well, once I recorded it, then you know you

D. ATTALI

1 have it.

2 Q. I understand. So it's on your phone now. You
3 have a recording on your phone. And you were aware it
4 was on your phone? That's what I'm asking.

5 A. Yes.

6 Q. You didn't forget it? You didn't say, "Oh,
7 my, I forgot about that." That didn't happen?

8 A. No. I knew it was on my phone.

9 Q. Now, you had a line-of-duty injury when you
10 were at the 70, correct?

11 A. Possibly. I don't know. I just don't
12 remember.

13 Q. Do you recall falling on a stairwell, tripping
14 over some garbage and going to the hospital with a
15 sprained knee?

16 A. Oh, yes, yes, yes. Yeah.

17 Q. Tell me what you can recall about that.

18 A. I think they fired or the janitor just -- I
19 don't know what happened. They were MIA. So the locker
20 room is on the third floor. And at that point, there
21 was no one there to clean up for quite some time, and
22 the garbage was piled very high. And I was going down
23 to roll call, and I don't know if it was a black garbage
24 bag I stepped on or something. There was a whole bunch
25 of garbage. And I just slipped and busted myself.

D. ATTALI

1 That's all I remember.

2 Q. And you went to the hospital?

3 A. Yeah. I remember telling the sergeant what
4 happened. I remember he was not happy.

5 Q. You filed a complaint report?

6 A. I don't remember. Well, I guess I must have
7 done some type of paperwork if I went to the hospital on
8 tour; but what exactly, I don't remember.

9 Q. Well, you subsequently retained attorneys. Do
10 you remember that?

11 A. Yes.

12 Q. You filed a Notice of Claim against the City?

13 A. Yeah.

14 Q. Do you remember how much you recovered?

15 A. No.

16 Q. \$5,000 ring a bell?

17 A. All right.

18 Q. That's not all right with me.

19 A. Well, if you say so. I don't remember the
20 amount.

21 (Whereupon, the following document was marked
22 as Defendant's Exhibit H and I for identification
23 as of this date by the Reporter.)

24 BY MR. SINGLETON:

25 Q. Let me show you what I've marked as

D. ATTALI

1 Defendant's Exhibit H. Do you recognize the document?

2 A. No.

3 Q. Look on the second page. Is that your
4 signature at the top?

5 A. Yes.

6 Q. It says it's signed by you in Garden City on
7 March 10th?

8 A. Yes.

9 Q. And it refers to a law firm at the top. It
10 says "Decatur, Cohen, DiPrisco"?

11 MR. AVALLONE: Decolator.

12 A. Yes.

13 Q. And do you recall those attorneys representing
14 you?

15 A. Yes.

16 Q. And how did you come to retain those
17 attorneys?

18 A. These attorneys, they had -- from what I
19 recall, in the 67 and 70 Precinct, in all the locker
20 rooms, you just see their fliers everywhere, like all
21 over the precinct. It's just there.

22 Q. And that's how you found them?

23 A. Yes.

24 Q. And I'll show you what I've marked as
25 Defendant's Exhibit I, and is that a document you

D. ATTALI

1 signed?

2 A. Yes, it is.

3 Q. And that's a General Release in connection
4 with the slip and fall -- with respect to the incident
5 we're talking about now, correct?

6 A. Yes, sir.

7 Q. And that indicates that you received \$5,000 in
8 settlement of the claim?

9 A. Yes.

10 MR. AVALLONE: Just note my objection to
11 "received."

12 Off the record.

13 (Whereupon, an off-the-record discussion was
14 held.)

15 BY MR. SINGLETON:

16 Q. Was \$5,000 paid to you?

17 A. Yes.

18 Q. And your attorneys took some fees out of that?

19 A. I don't recall.

20 MR. SINGLETON: Which, I guess, is your point.

21 Q. When all of this was going on, the disparaging
22 remarks, when, for example, Frigedis made -- did
23 Frigedis do anything other than have a ring tone?

24 A. Not that I recall.

25 Q. And when this stuff happened in the World

D. ATTALI

1 Trade Center Command, which you complained about, did
2 you go back to the Decolator law firm?

3 A. I don't remember.

4 Q. Did you consult any other attorney, besides
5 your present counsel?

6 A. I don't think so.

7 Q. And when for the first time did you consult
8 with your present counsel?

9 A. I don't know. I don't know the exact date.

10 Q. Has some event triggered your deciding, "I've
11 had enough. I'm going to see them"?

12 A. I just don't recall.

13 Q. Did you know them of Mr. Avallone or
14 Mr. Bellistri before you first went to see them?

15 A. No, no.

16 Q. And did you first go to see them before you
17 went to the OEE0?

18 A. I don't remember.

19 Q. Were you getting counseling from Officer
20 Beneduce with regard to your application for disability
21 retirement?

22 A. Initially, I asked him about details and
23 stuff, but it proved to be useless, and I realized in
24 the future why. Because he just did not like me. And I
25 believe for the fact, solely alone that I was Jewish, he

D. ATTALI

1 was completely useless as my delegate.

2 Q. Did you ever say that to him?

3 A. Possibly. I don't know. Well, why would I go
4 to him for anything when he hates my guts or me and my
5 people, religion? If that's everything that comes out
6 of your mouth, why would I need anything from you?

7 Q. Let me ask you: When you first decided to go
8 to the OEEEO --

9 A. Yes.

10 Q. -- and you spoke to Sergeant Soto, correct?

11 A. Yes.

12 Q. Did you speak to anyone other than Sergeant
13 Soto at OEEEO?

14 A. Yes. There was a female officer there with
15 Sergeant Soto and me in the conference room. I don't
16 know if she was a sergeant or a detective or a police
17 officer or her name. I don't remember, because it was,
18 from what I recall, pretty much Sergeant Soto asking me
19 the questions or the one speaking with me.

20 Q. And was Sergeant Soto responsive to your
21 concerns?

22 A. I didn't feel like he really cared.

23 Q. And why do you say that?

24 A. Because at the time, I wasn't looking to make
25 the situation I was in what it became or what it is now,

D. ATTALI

1 and he kept on asking me for specifics: The exact time,
2 the exact date, the exact location, the exact person.

3 For instance, when I said, "An officer would
4 pass by me and intentionally would come up and fart on
5 me. Comments: You should be used to this Zyklon B" --
6 I think he said Zyklon B. Or, "You're used to the gas,
7 aren't you?" When Officer Delbrocolo would walk past my
8 locker and throw change at me, which he did many times.
9 "Can you smell a Jew? Can you smell it?"

10 He wanted specific dates, times, locations,
11 and I didn't have that, and he didn't seem willing to go
12 ahead on that, because I did not know what date it
13 happened on. Was it Monday? I don't remember. It was
14 a month ago. I don't remember the date. The only thing
15 he seemed to pick up on was all the stuff that was put
16 in my locker.

17 Q. Did he say, "Do you have any evidence of these
18 remarks, anything to substantiate the remarks"?

19 A. I don't know. I don't remember what we pretty
20 much talked about. I just remember telling him --

21 Q. Well, you say he was asking for specifics.

22 A. Yeah.

23 Q. Did he say like, "Did you write it down? Do
24 you have any" --

25 A. I don't remember that question. I don't know.

D. ATTALI

1 I do not know.

2 Q. Did he ask you if you recorded anything?

3 A. I don't know if he did or didn't. I don't
4 remember.

5 Q. Did you remember that you had recordings on
6 your phone?

7 A. Yeah, I believe I did.

8 Q. You did remember?

9 A. Well, I think I knew I always had them.

10 Q. And you knew you had the text messages on your
11 phone?

12 A. Yes.

13 Q. And did you provide them, those text messages
14 and those recordings, to Sergeant Soto?

15 A. No, I did not.

16 Q. And why not?

17 A. I didn't want to give him that stuff, because
18 at that point all I wanted to be was left alone, just to
19 get away from them. And -- like, the initial thing that
20 I put on the transfer paper was I didn't care where
21 they'd send me. Put me anywhere. Doesn't matter.

22 I liked the World Trade Center Command. If
23 you ask any cop, it is a great gig. It's amazing.

24 You're not hounding numbers, so to say. It's just a
25 plus job in the police department. At that point, I

D. ATTALI

1 just needed to get away from them. I couldn't handle it
2 inside of my head, seeing them every day.

3 Q. When you say "need to get away from them,"
4 you're referring to the five officers you've identified
5 as making anti-Semitic remarks, correct?

6 A. Yes.

7 Q. And am I correct that what you wanted then is
8 them gone, not you? You wanted to be left alone until
9 they were taken -- this cancer was rooted out of the
10 World Trade Center Command, correct?

11 MR. AVALLONE: Just note my objection.

12 A. Well, it didn't matter to me whether it was me
13 removed from the World Trade Center or them, just not to
14 deal with them anymore.

15 Q. Well, from all the training you had in the
16 academy --

17 A. Yes.

18 Q. -- and the booklets you got and the patrol
19 guide, was it your understanding that the NYPD had a
20 procedure in place to deal with these issues, that if
21 you made a complaint, they would investigate and they
22 would take action?

23 A. No. I did not know how they would proceed
24 with this investigation.

25 Q. But you understood there was an OEEO office?

D. ATTALI

1 A. Yes.

2 Q. And you understood that they handled
3 complaints of this kind?

4 A. Yes.

5 Q. And that's why you went to see Sergeant Soto?

6 A. Yes.

7 Q. And you expected him to take corrective
8 action, correct?

9 A. Yes.

10 Q. And you didn't give it time to play out, did
11 you?

12 A. Well, nothing played out. Nothing happened.
13 It just made the situation even worse.

14 Q. You lived with this for two years you say,
15 correct?

16 A. Yes.

17 Q. And you gave it two months before you retired,
18 correct?

19 A. Yes.

20 Q. Before the investigation had concluded?

21 A. I didn't know what was going on with the
22 investigation at that point. I didn't know if they were
23 finished or starting. It's not like they keep you in
24 the loop of what's going on.

25 Q. You spoke to Sergeant Soto, correct --

D. ATTALI

1 A. Yes.

2 Q. -- after the investigation?

3 A. Yes.

4 Q. You had his phone number, correct?

5 A. Yes.

6 Q. You could call him and ask him, correct?

7 A. I did call him at one point saying, "The
8 situation is getting very" -- after I made the initial
9 complaint, I said, "The situation is getting very bad
10 here."

11 Q. Did you call him and tell him before you put
12 in your papers for a vested retirement? Did you call
13 him and tell him, "I can't take it anymore. I'm
14 leaving"?

15 A. No. I just told him -- well, I don't recall
16 exactly word for word, but I remember calling him and
17 saying, "You've got to help me out. The situation here
18 is very bad." It's gotten even worse after I made the
19 complaint.

20 Q. And what did he say? "No, can't do"?

21 A. It's not like in his -- well, I wouldn't quote
22 him, because I don't recall the exact words, but nothing
23 came out of it.

24 Q. Who was Police Officer Smertuk, S-M-E-R-T-U-K?

25 A. Officer Smertuk worked in the World Trade

D. ATTALI

1 Center Command. Yeah.

2 Well, you want to know about him or --

3 Q. Yeah. What did --

4 A. I'm not sure what he did there, but I just
5 remember he was the one I went to, to figure out what
6 paper do I need to do the transfer, to put in the
7 transfer paperwork.

8 Q. His sole connection to this is -- to put in
9 papers for transfer out of the command?

10 A. Oh, no. I don't know what, like, his specific
11 task is.

12 Q. But your contact with him, it was solely --

13 A. Oh, yeah. Yes.

14 Q. -- in connection with filing --

15 A. He directed me to whatever form it was that I
16 used.

17 Q. The 49 or the 57?

18 A. Yes. Yeah. Yes. Excuse me. And that's
19 pretty much all the contact I had with him about this
20 issue.

21 Q. Now, we were talking about the postings on
22 your locker, and you don't recall when the first one was
23 there?

24 A. No.

25 Q. Do you recall how long, over what period of

D. ATTALI

1 time were these postings on your locker? Was it -- what
2 I'm trying to get at is: The way the picture appears of
3 your locker -- and we can look at the exhibit.

4 A. Please.

5 Q. I'm directing your attention to Plaintiff's
6 Exhibit 6, and I'm going to go to the second to the last
7 page, which shows a view of your locker and the face of
8 your locker; is that correct?

9 A. Yes, it is.

10 Q. And the ads there, the supermarket's circular
11 is there. They are posted on the locker. How long had
12 they been on your locker?

13 A. These specific ones that I'm looking at here
14 on this picture, I don't have a specific time frame.
15 I'm not going to say it was there for a week, a month,
16 but this was there definitely a few weeks. There was
17 additional stuff, but I took it off, and then other
18 stuff appeared and other stuff, and this was the last
19 stuff.

20 Q. You were never able to determine who posted
21 things on your locker?

22 A. No. I never witnessed anybody put it there.

23 Q. Well, apart from witnessing, did you -- from
24 any manner, did you -- were you able to ascertain who
25 posted things on your locker?

D. ATTALI

1 A. No.

2 Q. But you say that you would take it down and
3 then it would reappear?

4 A. Yes.

5 Q. How quickly after taking it down did more
6 things appear?

7 A. I don't know.

8 Q. Did there come a point where you thought,
9 "Well, it's going to come back. I'll just leave it
10 there"?

11 A. I don't recall what was going through my mind
12 about these, the cutouts, the shopping cutouts.

13 Q. What was your understanding about the rules,
14 about what could be posted on a locker?

15 A. I don't know.

16 Q. Well, did you think you could post anything on
17 your locker? Could you post pictures of your family on
18 the outside of your locker?

19 A. I couldn't say.

20 Q. Well, on your locker, you have a National
21 Rifle Association sticker, correct?

22 A. Yes.

23 Q. Did you post that?

24 A. No.

25 Q. That was there when you arrived?

D. ATTALI

1 A. It wasn't there when I arrived. I don't
2 recall when it appeared on the locker, but it was.

3 Q. Well, this was a new command that was formed
4 in or around July of 2011, and prior to that it used to
5 be Staples. So when you came on, did you have a brand
6 new locker?

7 A. Yes.

8 Q. And did you have that locker throughout the
9 time you were at the command?

10 A. Yes.

11 Q. So is it fair to say that this was your locker
12 from the time it was brand new to the time you left?

13 A. Yes, it was.

14 Q. And you don't know who put that National Rifle
15 Association sticker on it?

16 A. Nope.

17 Q. And the sticker above it of the Butthead
18 with --

19 MR. AVALLONE: Uncle Sam?

20 Q. -- Uncle Sam cap, did you put that there?

21 A. No.

22 Q. Someone else posted that?

23 A. Well, yeah. It wasn't me.

24 Q. All right. And below that, there appears to
25 be, I guess, a circular for Cam; is that correct? Can

D. ATTALI

1 you tell?

2 A. I think so.

3 Q. And below that, there is another one. Do you
4 know what that is?

5 A. Yeah.

6 Q. What is that?

7 A. That's a -- it's a prayer. I'm not sure what
8 it is, which one or anything like that.

9 Q. But it's in Hebrew?

10 A. Yes.

11 Q. And did you post that?

12 A. I don't remember.

13 Q. Well, is it offensive?

14 A. No.

15 Q. Can you read what it says?

16 A. No, not really.

17 Q. You think it's a prayer, though?

18 A. Yeah.

19 Q. Is it a well-known prayer? Is that why you
20 say it's a prayer?

21 A. No. I'm pretty sure I remember reading it a
22 long time ago. I think under it, there is like a little
23 writing, you know. For example, in Hebrew it says,
24 like, Genesis, let's say, Chapter 21, Verse 13, I think,
25 for example, like that. I don't remember specifically

D. ATTALI

1 which one or what.

2 Q. Can you tell what -- there are two men
3 pictured in that?

4 A. Yes, I believe so.

5 Q. And can you tell what they're doing?

6 A. No idea.

7 Q. Are they holding something?

8 A. Possibly.

9 Q. Can you tell what it is?

10 A. A rifle.

11 Q. It does look like a rifle, correct?

12 A. Yeah.

13 Q. But you think it's a prayer as opposed to some
14 other message?

15 A. Oh, yeah.

16 Q. And on the right-hand side, as you face the
17 locker, there are -- going from top down, there is some
18 more supermarket circulars?

19 A. Yes.

20 Q. The second one is the circular for Jerusalem
21 Cafe?

22 A. Yeah.

23 Q. Have you ever been to the Jerusalem Cafe?

24 A. No.

25 Q. Do you know what it is?

D. ATTALI

1 A. Cafe, I assume, but, no, I've never been there
2 before.

3 Q. Well, does it cater to Jewish food?

4 A. It sounds like it's kosher.

5 Q. And below that, there is some -- another --
6 opposite the "Police. Don't move" sticker --

7 A. Yeah.

8 Q. -- there is another sticker. Do you recognize
9 that one?

10 A. I recognize it, but I don't remember what it
11 was, as in...

12 Q. Is it something you posted?

13 A. I don't know. I just recognize it. It's
14 familiar to me, but I just don't remember what it was
15 exactly.

16 Q. So it's something you might've posted?

17 A. I don't know. I won't say that.

18 Q. Well, did you ever post anything on your
19 locker?

20 A. Yes. I posted my "Police. Don't move"
21 sticker, gun safety, and the proper tactics. Well, I
22 actually I replaced the sticker myself.

23 MR. AVALONE: "No choice"?

24 THE WITNESS: Yes.

25 Q. Do you recall seeing the text -- we can pull

D. ATTALI

1 it out. But there was a text from you to Collazo about
2 getting a copy of the OGA and putting it on somebody's
3 locker?

4 A. Yes, I do recall.

5 Q. What do you recall about that?

6 A. I don't remember which officer it was from the
7 night shift, but I think they had an OGA color, and they
8 didn't know -- I guess you've got to fill out the UF-61,
9 which is like the report, the initial crime report. So
10 I think we were going to print it out and leave it on
11 his locker, so we got it because I think we heard the
12 other color on the radio.

13 Q. OGA stands for Obstruction of Governmental
14 Administration?

15 A. Yes.

16 Q. Was it your sense that he didn't know that?
17 Why would you want to print it out?

18 A. Because everybody knows what the term says.
19 But when you need it to write it up -- UF-61, a lot of
20 times you have these flash cards that they give you that
21 you receive with your memo book inserts, and, you know,
22 for robbery, it gives you the narrative you're supposed
23 to use in the complaint: At T.P.O., I, officer,
24 whatever, did observe defendant or, you know, commit,
25 you know, like that.

D. ATTALI

1 Q. Okay. So let me understand the context. So
2 you're saying that, if I understand this correctly, on
3 some midnight tour on which you were on the FOD
4 telephone service desk, you heard that someone made an
5 OGA color and you thought it would be helpful to have
6 somebody print out the law and post it on his locker?

7 A. Well, not post it, like scotch-tape it like
8 that. Either leave it on the locker or, you know, fold
9 it, shove it into the hole, so when they get to their
10 locker, they're able to pull it out. But, no, there was
11 no malicious intent in what we were discussing.

12 Q. Did you ever post anything on anyone else's
13 locker?

14 A. No.

15 Q. Did other people in the WTCC, in the large
16 locker room where your locker was located, have material
17 posted on their locker?

18 A. Yes.

19 Q. And they had material posted on their locker
20 other than the three stickers -- the stickers "Police.
21 Don't move," gun safety, and "Proper Tactics Save
22 Lives," correct?

23 A. Yes, they did.

24 Q. Those three stickers are on everybody's
25 locker?

D. ATTALI

1 A. Correct.

2 Q. And then officers had additional things posted
3 on their locker?

4 A. Yes.

5 Q. Of the same nature stickers, National Rifle
6 Association, patriotic stickers, whatever, correct?

7 A. Yes.

8 Q. Did you ever tell anybody outside of the
9 command, family, friend, that, "I've got these postings
10 on my locker of salami and ham and bacon circulars and
11 really offensive stuff, and I don't know what to do"?

12 A. Yes. I believe I mentioned it to my wife a
13 few times that they're posting bacon advertisement on
14 purpose, because they knew I do not eat pork. It's just
15 there to bother me.

16 Q. Well, you say your wife. Was she your wife at
17 the time you told her?

18 A. Yes.

19 Q. And you got married on March 4th, 2014,
20 correct?

21 A. Yes.

22 Q. And you don't recall any conversation with
23 anyone prior to that or other than her?

24 A. I do not recall any other prior conversation.

25 Q. Now, let's talk about the text messages. At

D. ATTALI

1 the time these text messages were going back and forth
2 on the midnight tour, between yourself and other
3 officers, everyone had a private cell phone, correct?

4 A. Yes.

5 Q. There was no department-issued phones while
6 you were at the WTCC, correct?

7 A. Correct. For officers, at least. Possibly
8 lieutenants, maybe they had a BlackBerry. I don't
9 remember exactly.

10 Q. But for non-supervisory officers, it was their
11 own cell phone or what?

12 A. Yes, their own cell phones.

13 Q. Did they have radios?

14 A. Yes.

15 Q. So they had a radio and they could call you on
16 the desk, correct?

17 A. Yes.

18 Q. You could remain in contact with them all
19 through the night on the radio?

20 A. Yes.

21 Q. Did you have a hard line? You answered a hard
22 line phone at the desk, too?

23 A. Correct.

24 Q. And to the extent you knew their cell phone
25 numbers, you could call them on that hard line, correct?

D. ATTALI

1 A. Yeah.

2 Q. When did you start creating group text
3 messages with the people who were on patrol on the
4 midnight tour?

5 A. I'm not sure I understand. Can you please
6 rephrase?

7 Q. Okay. Let me back up, then.

8 Did there come a time when you would create a
9 group text on your cell phone and send it out to the
10 people on that tour on a particular night?

11 A. I don't believe so. My phone at that time was
12 not able -- a lot of people had iPhones and I did not
13 during that whole period. And I was not able to send
14 group texts because of, I guess, iPhone somehow. It's a
15 different phone of some sort. Well, it's a different
16 phone, obviously, but, yeah, I was not able to send, as
17 far as I recall.

18 Q. Am I to understand that the text messages that
19 had been marked as an exhibit -- let's look at that.
20 Plaintiff's Exhibit 8, that -- well, let me back up.

21 Have you seen Plaintiff's Exhibit 8? Maybe
22 not in this form, but you've seen all the text messages
23 that are grouped in here?

24 A. Yes. At one point or the other, I have gone
25 over them.

D. ATTALI

1 Q. And are there more that haven't been produced?

2 A. No.

3 Q. I mean, more text messages of any kind?

4 A. No.

5 Q. Containing non-defamatory material,
6 non-derogatory material?

7 A. No.

8 Q. So on the first page, there appears to be a
9 message from Officer Delbrocolo, correct?

10 A. Yes.

11 Q. Is that part of a group text or is that just
12 text messages that Delbrocolo sent you, to you alone?

13 A. I believe this is what he had sent me.

14 Q. To you alone?

15 A. Maybe other people received it as well. I
16 don't know.

17 Q. No. From what you understand, it was a
18 message directed only to you? It's not part of the
19 group; it wasn't going to Mergeche and Hamilton and
20 other people?

21 A. I believe, yes, it was sent to only me, but
22 then, again, if this was sent to other people, my phone
23 would not let me know that it was -- I'm one out of
24 eight people in the chat.

25 Q. But as you sit here today, you have no

D. ATTALI

1 knowledge or information that this was anything other
2 than a message sent by Delbrocolo to you?

3 A. Yes.

4 Q. If we just start going through it, is that
5 true of all these messages that they -- until we get
6 to -- until we get up to page 21. There is a little
7 number on the top.

8 A. It seems the same as the other ones.

9 Q. Right.

10 A. Are we on the same one?

11 Q. Well, 21 is a text that says, "Who says Jews
12 don't eat bacon?"

13 A. Yes.

14 Q. But all of those, up to that point, appear to
15 be messages sent by Delbrocolo to you alone, not part of
16 any group text?

17 A. I assume, yes.

18 Q. And 22 is -- just appears to be a blow-up of
19 what was incorporated in 21; is that right?

20 A. Yes.

21 Q. And then going on, then with 24, 25, if you
22 keep going until we get to page 40. So up through 39,
23 these, again, are all messages from Delbrocolo to you?

24 A. Yes, I believe so.

25 Q. And then 40 is a message from -- or purports

D. ATTALI

1 to be a message from Sullivan to you?

2 A. Yes.

3 Q. And did you understand that to be a message
4 just from Sullivan to you?

5 A. At this point, I don't remember, but from what
6 it looks like on the paper, yes.

7 Q. But as I asked you before, do you have any
8 knowledge or information that this is part of a group
9 text as opposed to a message directed only to you from
10 Sullivan?

11 A. At this point, yes, I believe it's directed at
12 me, too, from Sullivan.

13 Q. And that's true up through page 46, correct?

14 A. Yes.

15 Q. Now, let me ask you. So this is taken off
16 your phone. And let's go back to Delbrocolo for a
17 second. You have his cell phone. And he is sending you
18 these horrible text messages. You could block the
19 calls, correct?

20 A. Technically, yeah, you can block anyone's
21 number.

22 Q. And this is the man you say was a racist who
23 from day one had nothing nice to say to you, and yet you
24 have his cell phone number saved as a contact in your
25 phone, correct?

D. ATTALI

1 MR. AVALLONE: Just note my objection.

2 A. Yes.

3 Q. Did you ever attempt to block him?

4 A. No. Why would I?

5 Q. Why would you?

6 A. You need -- you need to have his contact.

7 Q. You had a radio, correct?

8 A. Yes, but, you know, unofficially, this is how
9 they would tell you, you know -- or I'd say, "You've got
10 to move your car. The 1st precinct is going to tow it."
11 That's not something that you put over the radio.
12 That's something, you know, you text to them, "2062 or I
13 have post 13." These are things that they would text
14 you.

15 Q. Well, you also texted them that Sergeant
16 Porcelli is making rounds, correct?

17 A. Yes.

18 Q. Lieutenant Chang is going out now, correct?

19 A. Yes.

20 Q. And you wouldn't post that over the radio,
21 correct?

22 A. Correct.

23 MR. GARBER: I'm going to take a five-minute
24 bathroom break.

25 MR. SINGLETON: Let's take a break.

D. ATTALI

1 (Whereupon, a short recess was taken from
2 12:10 p.m. to 12:17 p.m.)

3 BY MR. SINGLETON:

4 Q. So we were up to page 40. Go to page 41 now.
5 Now, P.O. Sully, that refers to Sullivan?

6 A. Yes, it does.

7 Q. Now, you said you never had any -- you didn't
8 like Delbrocolo at all. What about Sullivan?

9 A. Well, I shouldn't say I didn't like Delbrocolo
10 at all. He hated me. But what was the question, again?
11 I'm sorry.

12 Q. Thank you for the correction.
13 Did you like Delbrocolo?

14 A. No.

15 Q. Was he nice to other people?

16 A. Yes.

17 Q. Do you think he just had it out for you? Was
18 it because you were Jewish or because he just didn't
19 like you?

20 A. Well, I believe it was because I was Jewish,
21 but that's what I believe. I don't know what he is
22 thinking.

23 Q. Did you ever have any incident with him, you
24 know, anything -- any unpleasant experience with him?

25 A. With who?

D. ATTALI

1 Q. With Delbrocolo, apart from the anti-Semitic
2 remarks, or was there something else that happened?

3 A. Yes.

4 Q. What?

5 A. On a few occasions, while I was at the FOD, he
6 would throw matches at me, and I can't give you the
7 specific quote of what he was saying. It was something
8 to do with Jews go up in fire quick, ashes, something to
9 do with ashes. He would throw matches at me. He lit
10 matches. He would pass gas on me with references to gas
11 chambers, "You should be used to it." On multiple
12 occasions, he threw change at me, whatever it was,
13 pennies, quarters, saying, "Can a Jew smell it?" or,
14 "Can you resist it?" So, yes.

15 Q. Right. But those are all anti-Semitic
16 remarks. I'm asking, was there any other incident that
17 you can recall with Delbrocolo that may have caused him
18 to do this to you?

19 A. No, nothing that I know of.

20 Q. Now, on page 41 it says, "P.O. Sully." Did
21 you call him Sully?

22 A. I don't remember what I called him. It's
23 easier to type.

24 Q. Well, you're not Irish, are you?

25 A. No.

D. ATTALI

1 Q. And so to refer to Sullivan as Sully, I mean,
2 that -- Sully is a nickname for Sullivan. But is that a
3 nickname you heard before, or did other people refer to
4 him as Sully?

5 A. That's what everyone referred to him as, as
6 Sully.

7 Q. So other people in the command called him
8 Sully?

9 A. Yeah. Yes.

10 Q. Let me ask you: Did you have every officer --
11 there were 15 or so in the command in your platoon. Did
12 you have all their cell phone numbers in your contact
13 list?

14 A. Yes.

15 Q. Where did you get their cell phone numbers?

16 A. They gave out sheets with everyone's platoons
17 with their cell phone numbers as well as at the FOD at
18 the time, right by my head on the wall, it was
19 scotch-taped to the wall with everyone's squads, names,
20 phone numbers.

21 Q. And if we go on through -- up to page 47,
22 those are all texts from Sullivan, correct, not
23 including 47 but up to 47?

24 A. Yes.

25 Q. And 47 comes from P.O. Joe. Who is that?

D. ATTALI

1 A. That would be Beneduce.

2 Q. Now, is there a reason why you referred to
3 Beneduce by his first name as opposed to his last name?

4 A. Yes. Everyone referred to him as Joe, so P.O.
5 Joe. Because P.O. was police officer.

6 Q. Right.

7 A. Assuming you're looking up in your phone other
8 cops' contacts, you know, you just go P.O., and you're
9 in that area.

10 Q. Correct.

11 A. But, no. That's what everyone referred to him
12 as, Joe, so. The same idea with Sullivan.

13 Q. Well, certainly Joe is more familiar as the
14 first name than the last name, and you referred to
15 Delbrocolo formally, Delbrocolo. You didn't call him
16 P.O. Chris, right?

17 A. No, I didn't.

18 Q. Were you friendly with Beneduce?

19 A. No.

20 Q. And Joe refers to Beneduce?

21 A. Yes.

22 Q. And so we have three pages of text messages
23 from Beneduce, and then we're back to Delbrocolo on a
24 different phone, is that correct, for three pages?

25 A. Yes, I believe so.

D. ATTALI

1 Q. Now, page 52, we have a group message:

2 P.O. Xue, P.O. Miranda, P.O. Something and so on. Do
3 you -- this is off your phone, correct?

4 A. Yes. This is a screenshot from my phone.

5 Q. And this is the phone that would tell you
6 there was group messaging going on?

7 A. I suppose so.

8 Q. And let me understand, did you create -- ever
9 create groups to keep in touch with people who were on
10 duty on a particular night?

11 A. I don't know. I don't remember. You're
12 asking me a minor detail from years ago that -- I don't
13 know. I couldn't say yes or no.

14 Q. Well, you might have a recollection of having
15 created the group?

16 A. I don't.

17 Q. Who did Stew refer to?

18 A. Stew would be Officer Sztukowski. How do you
19 spell his name, I don't know.

20 Q. Why don't you refer to the personnel list.

21 A. Oh, I found it.

22 Q. And?

23 A. Do you want me to spell it?

24 Q. Yeah. Please, for the record.

25 A. S-Z-T-U-K-O-W-S-K-I.

D. ATTALI

1 Q. Now, this particular one says, "1st Precinct
2 called. They are tossing cars for movie shoot between
3 North Moore, Varick to Hudson." Did I read that
4 correctly?

5 A. Yes.

6 Q. And P.O. Trancoso responds with, I guess, an
7 image of a face with its eyes covered, correct?

8 A. Yes.

9 Q. What did you understand that to mean?

10 A. I don't know. Just nothing.

11 Q. The speaker in the first one, "1st Precinct
12 called. They're tossing cars for movie shoot," is that
13 you? You're the speaker, correct?

14 A. I believe so. I think I meant moving, towing.

15 Q. You mean towing instead of tossing.

16 A. Yeah. I'm pretty sure that's --

17 Q. Autocorrect? Is that an instance of
18 autocorrect?

19 A. Maybe. I don't know. You mean, when the
20 phone --

21 Q. Changed the words on you?

22 A. I don't remember. I don't know.

23 Q. Now, in the next message on page 53, it shows
24 that there is a -- Sullivan posted a picture of Hitler
25 giving the salute, correct?

D. ATTALI

1 A. Yes.

2 Q. And Trancoso responds "LOL"?

3 A. Yes.

4 Q. Did Trancoso ever make anti-Semitic remarks
5 towards you?

6 A. No.

7 Q. And is 54 just a continuation of what's on 53?

8 A. Yes, I believe so.

9 Q. So when it says, "He is just pointing out
10 which ones to move," is that referring to the cars
11 they're towing?

12 A. I believe he was trying to say, "Oh, Hitler is
13 pointing which cars to be moved."

14 Q. That's what I'm trying to understand. So this
15 is all in a context of a message you started out saying,
16 "They're tossing cars -- they're towing cars for movie
17 shoot," and somebody puts a post as Hitler and he's
18 saying, "He's just pointing to which ones to move,"
19 correct?

20 A. I suppose.

21 Q. And Trancoso responds "LMAO." What did you
22 understand that to mean?

23 A. Well, now I know what it means, but I guess he
24 is just laughing at Sullivan's response.

25 Q. And LMAO means "laughing my ass off"?

D. ATTALI

1 A. Yes, I believe so.

2 Q. Now, on page 55, it appears this is a
3 different group. This includes as a second in the
4 group -- first in the group is no longer Stew. It's
5 P.O. Sully, then P.O. Murray. That's Christopher
6 Murray, correct?

7 A. Yes.

8 Q. And we don't know who comes after that. That
9 first message, "Supervision tonight. I already got
10 scratched two times tonight." Is there any way to tell
11 who the speaker is from the context?

12 A. No. I'm sorry. I do not know.

13 Q. And your text at 3:25 a.m. on the pages --
14 "INSP" -- inspector?

15 A. Yes.

16 Q. "At command." What does that mean?

17 A. That lets the sergeants know, let yourselves
18 know the inspector is in.

19 Q. Meaning Burke?

20 A. I don't know if it was Burke or the previous
21 one. I don't know when it was done.

22 Q. But it would be one of the two?

23 A. One of the two, yes.

24 Q. And given that this is a message in 2014,
25 around April, it's likely to be Burke, correct?

D. ATTALI

1 A. Yes, I suppose.

2 Q. And you're on modified duty; you're on
3 telephone service, correct?

4 A. Restricted.

5 Q. Restricted?

6 A. Yeah.

7 Q. By the way, what's the difference between
8 modified and restricted or limited?

9 A. So limited is -- you got me. I think limited
10 is if you're just coming off being sick, possibly, and
11 you're about to go back full duty any day. And
12 restricted means you're restricted, let's say, you
13 shouldn't be driving one of the RMPs or handling a
14 prisoner. And modified would be, like, if you're
15 stripped of your gun and shield, you know, if you did
16 something wrong.

17 Q. Well, let me ask you: You were complaining
18 that you had a line-of-duty injury to your shoulder and
19 you failed the gun test several times, correct?

20 A. Yeah. Well, I don't know how many times, but,
21 yes, I did fail.

22 Q. At least twice?

23 A. Yes.

24 Q. And that's because you're required to shoot
25 with both hands?

D. ATTALI

1 A. Yeah. Yes.

2 Q. And you're right-hand dominant, correct?

3 A. Yeah. Yes.

4 Q. And you injured your left hand, correct?

5 A. Yeah.

6 MR. AVALONE: Just note my objection as to
7 what was injured. You said "your left hand."

8 Q. You claimed an injury to your left wrist and
9 shoulder, correct?

10 A. Yes.

11 Q. As a result of effecting an arrest in 2009,
12 correct?

13 A. Yes.

14 Q. And when you failed the gun test, did they
15 take away your gun?

16 A. They took away my gun at a certain point. I
17 just don't remember when. Maybe at the medical
18 division. Yeah, I gave it to somebody at the medical
19 division, but I don't know who it was at this point.

20 Q. And because you couldn't pass the gun test,
21 you were not qualified to go on patrol, correct?

22 A. Yes.

23 Q. And was it your understanding that if you fail
24 to qualify -- if you continue to fail to qualify, there
25 would come a point in time when you would be -- your

D. ATTALI

1 employment would be terminated or the process to
2 terminate your employment would begin?

3 A. No. I never -- I did not know that.

4 Q. Did you think you could go on on limited duty
5 indefinitely?

6 A. No. I was planning on going back full duty.
7 I was telling one of the lieutenants that went with me
8 to do the gun test or after. I was getting better,
9 slowly but surely. The first time I went to re-qual, I
10 think after two rounds I couldn't lift a gun up anymore.
11 And I told him, I said, "Hey, look at my range
12 qualifications." You'll see literally two out of 50
13 shots going -- don't know the exact amount -- to 12, and
14 then all the way down to the last time I qualified, I
15 only missed two shots. Next time I go -- I'm getting
16 better, slowly but surely. I think I'll pass.

17 Q. On May 15th of 2014, you fired 20 rounds and
18 scored 12. And the next month, on June 21st, you fired
19 50 rounds and scored 60. Is that what you're talking
20 about?

21 A. Yes, I believe so.

22 Q. And that's only in a course of a little bit
23 more than a month. Were you doing physical therapy?

24 A. At that point, no. I did after the surgery,
25 but not at that particular time.

D. ATTALI

1 Q. Is it correct that you would do -- you've
2 already said you would do weightlifting and you would go
3 to the gym, correct?

4 A. Yes.

5 Q. And free weights?

6 A. A little bit of everything. Cardio, running.

7 Q. But free weights, also?

8 A. Yeah.

9 Q. Dumbbells?

10 A. Not so much.

11 Q. Kettlebells?

12 A. No, no. Like, Smith machine. I don't know if
13 you know what that is.

14 Q. Yes.

15 A. Yeah. Well, a lot of -- I like the Smith
16 machine a lot, because it makes it easier, you know. It
17 takes, like, the weight off.

18 Q. A Smith machine, for those who don't know, is,
19 basically, a stationary fixed bar that you raise over
20 your head with weights on both sides. Like, lifting a
21 barbell in a stationary, straight way?

22 A. Yes. It's assisted lifting. Like, you don't
23 feel the real weight of what's on the barbell,
24 because -- I don't know -- whatever, the springs or
25 whatever helping you throw it up. I like the Smith

D. ATTALI

1 machine.

2 Q. So you were getting better. You would do
3 pull-ups and push-ups in the command?

4 A. No.

5 Q. Never?

6 A. No, not at all.

7 Q. So if someone said, "I'd see him do push-ups
8 and pull-ups in the command," they would be lying?

9 A. Definitely. Just like they lied, like, I
10 never -- they never sent me any of this stuff. Why
11 would I believe a word they've got to say?

12 Q. What do you mean they never sent --

13 A. Oh, they never sent Attali none of this. I
14 never said nothing to him or I'll see him in the gym. I
15 don't believe a word they say.

16 Q. You're talking about the five officers that
17 were charged?

18 A. Yep. Collazo, too.

19 Q. Collazo, too. Anyone else you think would
20 lie?

21 A. Why wouldn't they all? They're all trying to
22 protect their fellow officers. It's one against eight
23 and the two delegates, you know.

24 Q. Okay.

25 A. But to answer your original question, no.

D. ATTALI

1 We had a joined gym between the 1st Precinct
2 and us, but I never used it. And, again, at that point,
3 I was not working out for quite some time.

4 Q. Well, did you ever go for physical therapy and
5 were told you've got to do these exercises to strengthen
6 your shoulder?

7 A. Yes.

8 Q. And over what period of time did you do that?
9 Was it just shortly after you had the laparoscopic
10 surgery to your shoulder?

11 A. Yes. I went to physical therapy.

12 Q. For how long?

13 A. I don't remember.

14 Q. Two times a week, three times a week, once a
15 week, once a month?

16 A. Possibly, two times a week. I remember it was
17 in -- it was somewhere here in the city. I don't
18 remember how many times I went.

19 Q. And you think it was two times a week over
20 some period of time?

21 A. Yeah.

22 Q. Going back to these messages, if we -- these,
23 again, appear just to be now from Delbrocolo up to
24 page 60, correct?

25 A. Yes.

D. ATTALI

1 Q. And then at 61, we have a group message,
2 again, with now Ramirez and Mergeche and others,
3 correct?

4 A. Yes.

5 Q. And it appears Drummy is in this group,
6 because it's a message from him?

7 A. Yes.

8 Q. And Sully is in the group?

9 A. Yes.

10 Q. Now, looking at this, it says -- Sully says --
11 everybody texted you every 45 minutes, and he does have
12 a 10:52. And four minutes later, Mergeche says "LOL,"
13 correct?

14 A. Yes.

15 Q. And then approximately seven minutes later,
16 11:03, Drummy, spelled D-R-U-M-N-Y [sic] -- referring to
17 John Drummy, to your understanding?

18 A. Drummy, I don't remember his first name, but
19 there was only one Drummy at the command.

20 Q. And he sends a picture. What do you
21 understand that to be?

22 A. It was a video.

23 Q. Oh, it was a video?

24 A. Yeah.

25 Q. Did you save the video?

D. ATTALI

1 A. Yeah. I mean, it was there under this text.

2 Q. And what was this video of?

3 A. So the video -- I'm somewhat familiar with the
4 label on the top left. It's from -- I shouldn't say
5 familiar, but it's from Hamas TV or it's called Al-Aqsa
6 TV. Specifically, it's a Palestinian news channel known
7 to be -- to have a lot of anti-Semitic -- whether it's
8 Mickey Mouse shows or whatever. And this was -- what I
9 took from it was -- I guess it was a guy trying to act
10 like a rabbi. I don't remember exactly what he was
11 doing in the video, but I took it in a negative way, as
12 in it's not a friendly video.

13 Q. Do you remember what was on the video?

14 A. I don't remember exactly what the gentleman
15 that you see there in the clip was doing. At this
16 point, I don't remember.

17 Q. And then Mergeche says, "Wow." Did you
18 understand him to be shocked by the video?

19 A. That's what my understanding of it was.

20 Q. And then on the last page, we have a different
21 group again. Did the group change each night depending
22 on who was on the tour?

23 A. I assume, yes, because not every day it's the
24 same squads in. Because I have my set schedule, you
25 know, I do 5/2, five days a week, two off/five days.

D. ATTALI

1 And in other squads, they do 5/2, 5/3. So everybody
2 rotates through your schedule or me through theirs,
3 should I say.

4 Q. Right. So the composition of the group is
5 changing every night?

6 A. Yes, depending -- yeah. It could be the same
7 for three nights in a row and then different for two,
8 yes.

9 Q. Now, in this last one, it says from Sullivan,
10 the last message in this exhibit -- Sullivan is saying,
11 "You're a dirty spy, Attali."

12 A. Yes.

13 Q. And before that, he says, "Day late and a
14 dollar short." And the first message is from you. It
15 says, "Inspector heading out," at 1:29 a.m. That's
16 Inspector Burke?

17 A. If the date falls into when he was there,
18 then, yes.

19 Q. My understanding is that Burke works day tour,
20 correct?

21 A. I believe so.

22 Q. And so what would occasion him to be out at
23 1:30 in the morning?

24 A. I don't know. I guess they once in a blue
25 moon -- like I said, I don't know how they schedule

D. ATTALI

1 their days, but once in a blue moon, I guess, he would
2 show up. Just like how the captain once every few
3 months has to do a night tour, just to be there during
4 the night.

5 Q. And was that true of Burke, that he had to be
6 there once -- on occasion during the night?

7 A. Well, if it weren't for these texts, I don't
8 remember him being there.

9 Q. But your purpose in sending the text is to get
10 everybody -- not use the radio and say, "Hey, there is a
11 sergeant or an inspector or someone is making tours.
12 Heads up"?

13 A. Yes. I wouldn't use the radio for that.

14 Q. You're, basically, saying, "If you're
15 sleeping, wake up."

16 A. No. Just heads up, "Inspector is out. Be on
17 point." You couldn't use the radio for something like
18 that.

19 Q. And what did he mean, "Day late and a dollar
20 short"? Did he already see the inspector?

21 A. Possibly.

22 Q. Like, you should've told me half hour ago?

23 A. Possibly. I don't remember this specific
24 conversation, but, again, that's what I'm gaining from
25 looking at it now.

D. ATTALI

1 Q. And, "You're a dirty spy, Attali." Did that
2 mean -- what did that mean to you?

3 A. He'll send me the reference all the time of,
4 like, some Zionist scheme, to take over the world of
5 some sort or reference all the time to some book.

6 MR. AVALLONE: Some book?

7 THE WITNESS: Yeah, book. He is always
8 talking about the elders or Zion or something,
9 "Zionist always taking over the media."

10 Q. So you regard this text on page 62 to be
11 anti-Semitic?

12 A. Yeah. I think this text goes along with
13 another picture text that he had previously sent me.
14 It's here somewhere. I passed through it.

15 Q. Could you see if you can find it?

16 A. Yes. It's kind of like a CIA logo. It's on
17 page 55. I don't know where he received this picture
18 from, but to me, this and that are -- for him, same
19 topic.

20 Q. I see.

21 A. As in saying, "Oh, there is some Zionist to
22 take over the plan in the world that no one knows
23 about."

24 Q. Okay. And if that's true and this is all part
25 of the same night, page 55 is much later towards the end

D. ATTALI

1 of the tour, correct?

2 A. Well, definitely, obviously, the time is
3 different, but, again, I don't know which day this is.

4 Q. Well, is it possible that you say, "Inspector
5 heading back," and then at 2:19 you're saying,
6 "Inspector at command," meaning he is back in the house?

7 A. Possibly. Either that or it's a different day
8 and he came in. I don't know. I just don't remember
9 this night.

10 Q. Now, these text messages that are collective
11 here, did you make screenshots of these messages? Do
12 you know how this document was created?

13 A. What did we do? I don't remember exactly how
14 we did it, but I did it with my attorneys. I don't
15 remember exactly how we got it in this format. I just
16 remember showing it to them. I don't remember how we
17 did it.

18 Q. Speaking about your attorneys, you mentioned
19 Decolator. They had stuff posted all over the precinct
20 if you need a lawyer, I guess, for anything.

21 But your present attorneys, did somebody
22 recommend them?

23 A. How did I get their number? I think I got it
24 from Cohen and Decolator.

25 Q. You did?

D. ATTALI

1 A. Yeah.

2 Q. So you went back to those attorneys you'd used
3 before and they said --

4 A. Yeah. They gave them a quick brief of, you
5 know, encountering a lot of problems with people.

6 Q. And did they say they had expertise in this
7 area?

8 A. I don't remember the conversation I had.

9 Q. All right. I don't want to get into
10 conversation. Sorry.

11 Let me ask you: So it's your testimony that
12 when you went and filed the complaint with Sergeant Soto
13 at the OEEO, and you can refer to Exhibit 9. This
14 was -- this is the complaint you made when you,
15 ultimately, went to see Sergeant Soto?

16 A. Yes.

17 Q. And did you fill that out in his presence?

18 A. I don't know.

19 Q. What's your recollection?

20 A. Well, it's definitely my handwriting. Yeah.
21 I just don't remember doing paperwork.

22 Q. Where was Sergeant Soto located?

23 A. I know One Police Plaza.

24 Q. So you had to walk over from the --

25 A. No. I think I went on my day off.

D. ATTALI

1 Q. You went in the daytime?

2 A. Yeah.

3 Q. And you say, "I'm always referred to as
4 'Jew/stupid Jew/dirty Jew,' nonstop comments of me being
5 Jewish as well as comments of Hitler and World War II,
6 concentration camps. Various people as well as specific
7 individuals make these comments," correct?

8 A. Yes.

9 Q. Am I understanding correctly, you're saying
10 that at the time you made this complaint, it was just
11 that: I was seeking general advices; how can I put an
12 end to this, and not necessarily to -- I mean, were
13 you -- what were you trying to do? Get out of the
14 command, or had you made the determination that, "I'm
15 filing complaints against people," because you don't
16 name anybody in here.

17 MR. AVALLONE: Just note my objection.

18 A. Well, at this point I just wanted it to stop.
19 That's it.

20 Q. But you don't name anybody specific here. You
21 don't say Delbrocolo, Sullivan, Miranda, anybody.

22 A. The writing here, no, but I don't remember
23 if -- well, yeah.

24 Q. You think on the blocked out, you think you
25 named people there?

D. ATTALI

1 A. Possibly. I mean, you could see Delbrocolo
2 right on the bottom is written there.

3 Q. Yes.

4 A. And I don't know what's blacked out in the
5 other stuff.

6 MR. SINGLETON: Let's mark this as the next
7 exhibit.

8 (Whereupon, the following document was marked
9 as Defendant's Exhibit J for identification as of
10 this date by the Reporter.)

11 BY MR. SINGLETON:

12 Q. Let me show you what I've marked as
13 Defendant's Exhibit J. It is your personnel profile
14 report for you.

15 Have you ever seen this document?

16 A. No.

17 Q. If you'll direct your attention to the third
18 page, page 3, Bates-stamp No. 1356 at the bottom.

19 A. Yes.

20 Q. It lists medical availability history records?

21 A. Yeah.

22 Q. It shows that on 11/19/2009, you were on full
23 duty that day and then went to limited capacity. Is
24 that the date that you suffered a line-of-duty injury in
25 the course of effecting an arrest?

D. ATTALI

1 A. It sounds about right. Specific date, I don't
2 recall.

3 And what does this whole line-of-duty stuff
4 have to do with anything with the situation at hand?

5 MR. AVALLONE: Just answer his questions.

6 A. No. I don't know. Maybe; maybe not. No
7 idea. I don't remember.

8 Q. Did you ever take the position that you had
9 been denied your claim for three-quarter disability
10 because of discrimination?

11 A. Say that again. I'm sorry. Please repeat.

12 (Whereupon, the referred-to question was read
13 back by the Reporter.)

14 THE WITNESS: No.

15 Q. You, ultimately, filed a complaint with the
16 Equal Employment Opportunity Commission of the federal
17 government, correct?

18 A. Yes.

19 Q. And how did that come about? Is that
20 something you did with your attorney?

21 A. Yes.

22 (Whereupon, the following document was marked
23 as Defendant's Exhibit K for identification as of
24 this date by the Reporter.)

25

D. ATTALI

1 BY MR. SINGLETON:

2 Q. And if you look at this and what I've marked
3 as Defendant's Exhibit K. Is this a copy of the
4 complaint you filed with the United States Equal
5 Employment Opportunity Commission?

6 A. If my signature is on it, then I suppose, yes.

7 Q. And that is your signature on the last page?

8 A. Yes.

9 Q. And it indicates you signed it in the presence
10 of Rocco Avallone on July 18, 2014?

11 A. Yes.

12 Q. Well, if you go to -- starting with the third
13 page, which says, "I, David Attali," and then you go two
14 more pages and you see a list of one, two, three, four,
15 and five. And five says, "The NYPD and the pension
16 board continue to deny my line-of-duty injury disability
17 pension retirement application despite medical records
18 that clearly show I am disabled due to a line-of-duty
19 injury I suffered in 2009. I believe this is in
20 retaliation for having filed complaints with my
21 commanding officer and the OEEEO against my supervisors,
22 who continue to bully me, my co-workers and union
23 delegates, who treat me with hatred and disgust simply
24 because of my religion, race, and national origin."

25 Did I read that correctly?

D. ATTALI

1 A. Yep. Yes, you did.

2 Q. You read this before signing it?

3 A. Possibly.

4 Q. Possibly?

5 A. Yep.

6 Q. Did you understand you were swearing to the
7 truth of everything in this statement?

8 A. Yes.

9 Q. At the last line, immediately preceding your
10 signature, it says, "I have read and had an opportunity
11 to correct this affidavit and swear that these facts are
12 true and correct to the best of my knowledge and
13 belief"?

14 A. Yes.

15 Q. Is everything in that paragraph that I just
16 read true and correct, to the best of your knowledge and
17 belief?

18 A. Yes.

19 Q. You say you filed complaints against your
20 supervisors who continue to bully you?

21 A. If that's what it says.

22 Q. What supervisors bullied you?

23 A. At this point, I do not recall.

24 Q. Is it correct that in your complaint in this
25 action you do not claim that you were denied disability

D. ATTALI

1 retirement because of discrimination?

2 A. Can you please read that?

3 (Whereupon, the referred-to question was read
4 back by the Reporter.)

5 THE WITNESS: I don't know. Maybe at that
6 time, while I was still in the police department, I
7 felt as if hate was coming from every angle. You
8 know, if my sergeants don't do nothing and they
9 stand there when this guy day in and day out is
10 calling me, "You're a fucking kike." Maybe that's
11 what I thought at that time was correct.

12 Q. Right. But a few questions ago, when I
13 started to go down this line, you said, "What does this
14 have to do with this?" Meaning, your line of duty is
15 unrelated to this case, correct?

16 A. I believe so.

17 Q. So am I correct that you are not suing about
18 the line-of-duty disability denial in this case?

19 A. I don't know. You kind of lost me.

20 Q. You're not sure what you're suing over?

21 A. Oh, I know.

22 Q. Well, are you suing about a denial of your
23 disability benefits?

24 A. Am I suing for denial --

25 MR. AVALONE: Don't guess.

D. ATTALI

1 Q. Are you suing in this case --

2 A. Oh, no, no.

3 Q. No?

4 A. Not at all.

5 Q. And you were advised, were you not, that if
6 you were unhappy with the determination by the NYPD that
7 you were not entitled to a three-quarter disability,
8 that you had a right to seek judicial review of that
9 determination, that you could go to court and say
10 they're wrong?

11 A. No, I did not know that was an option.

12 (Whereupon, the following document was marked
13 as Defendant's Exhibit L for identification as of
14 this date by the Reporter.)

15 BY MR. SINGLETON:

16 Q. I will show you what I've marked as
17 Defendant's Exhibit L. It's a letter to you, addressed
18 to you, dated August 12th, 2016. Do you recall -- it
19 was sent to you by certified mail/return receipt
20 requested. Do you recall receiving this letter?

21 A. No.

22 Q. Is it your testimony you never received this
23 letter?

24 A. Maybe I did; maybe I didn't. I don't recall.
25 I don't remember.

D. ATTALI

1 Q. Well, this letter advises you that your
2 application for disability retirement was denied by the
3 board of trustees --

4 A. Okay.

5 Q. -- of the police pension fund, correct?

6 A. Yes.

7 Q. And it says in the next paragraph that, "If
8 you're not happy with this decision, you may file an
9 Article 78 proceeding no later than four months from the
10 receipt of the letter," correct?

11 A. Yes.

12 Q. Did you understand what that meant?

13 A. No.

14 Q. Because I can show you other statements that
15 have similar language.

16 MR. AVALLONE: Objection.

17 A. Okay.

18 Q. Did you understand that you could go to court
19 to challenge that determination?

20 MR. AVALLONE: I'm going to object.

21 MR. SINGLETON: That's all you get to say.

22 A. Please say the question again.

23 Q. You had applied for disability retirement,
24 correct?

25 A. They put me in for disability retirement.

D. ATTALI

1 Q. Right. Because you couldn't qualify for a
2 gun, and they wanted to see if you could continue to
3 perform as a police officer, correct?

4 MR. AVALLONE: Note my objection.

5 A. Maybe the medical district doctor did.

6 Q. Did there come a time when you put in your own
7 application for disability retirement?

8 A. I don't know. I always thought once it was
9 put in, it was put in by whoever the doctor was at the
10 medical district.

11 Q. Did you believe you were entitled to
12 three-quarter disability retirement?

13 A. I believe whatever their decision was is their
14 decision.

15 Q. So you were happy whatever the outcome --
16 whatever they determined?

17 MR. AVALLONE: Objection.

18 A. I would've been happy if they would've
19 accepted my transfer and I would've still been a cop
20 right now. That's what I would've been really happy
21 with.

22 Q. Let me ask you about that. You appeared on a
23 radio show, correct?

24 A. Yes.

25 Q. With -- am I pronouncing it right? -- Pesach

D. ATTALI

1 Kirschner and J. Eliana Liorit Brower? Do you remember
2 that?

3 A. I remember the radio show conference call. I
4 don't remember their names.

5 Q. It was BlogTalkRadio?

6 A. If you say.

7 Q. But you do recall going on a show?

8 A. Yes.

9 Q. And it was -- they were sympathetic to your
10 cause? Is that fair to say?

11 A. I don't remember.

12 Q. Well, why did you go on that? How did that
13 come about?

14 A. It happened. How exactly, I don't recall the
15 details.

16 Q. Well, did they call you and say, "Hey, we saw
17 your lawsuit and we want you to come on and talk about
18 this"?

19 A. I just don't know. I just don't remember.

20 Q. Do you recall them asking you in effect,
21 "Well, if you want to -- it's always been your dream to
22 be a police officer. Why don't you go out to Nassau,
23 Suffolk, because they need officers. With your
24 training, World Trade Center Command, you'd get a job."

25 Do you remember that?

D. ATTALI

1 A. No.

2 Q. Well, tell me. What have you done, if
3 anything, to get other employment as a police officer?

4 A. I called up to Englewood Police Department but
5 I missed their exam, and they said they won't give it
6 for another year and a half, but that was a while ago.
7 And then recently I applied to do the entrance exam in
8 the Tenafly Police Department. It's T-E-N-F-L-Y [sic],
9 New Jersey.

10 Q. You have specialized training as a result of
11 being in the World Trade Center Command, correct?

12 A. Yes.

13 Q. And that training is highly sought after by
14 other police departments, correct?

15 MR. AVALLO: Objection.

16 A. Possibly.

17 Q. Did you ever apply to Suffolk County?

18 A. No.

19 Q. Nassau County?

20 A. No.

21 Q. Rockland County?

22 A. Maybe. I don't remember.

23 Q. Yonkers?

24 A. No.

25 Q. So you're saying you missed the test in

D. ATTALI

1 Englewood and you think you made a call to Tenafly?

2 A. Oh, no. I signed up. Actually, the test is
3 coming up soon.

4 Q. So you're all better now, correct?

5 A. Yeah.

6 MR. SINGLETON: With that, let's take a break
7 for lunch.

8 (Whereupon, a lunch recess was taken from
9 1:04 p.m. to 1:46 p.m.)

10 (Whereupon, the following document was marked
11 as Defendant's Exhibit M for identification as of
12 this date by the Reporter.)

13 BY MR. SINGLETON:

14 Q. Let me show you what I've marked as
15 Defendant's Exhibit M, and this is Plaintiff's Initial
16 Rule 26 Disclosure. This is not a document signed but,
17 I'll direct your attention.

18 Now, in A, it talks about names and addresses
19 of witnesses, and the fifth person listed is your wife,
20 Tamar Attali, and it says she has knowledge of emotional
21 and mental damages, personality changes, hostile work
22 environment, economic damages.

23 Is there anybody else who knows anything about
24 those subjects, to your knowledge?

25 A. Specific details, besides from my attorneys,

D. ATTALI

1 no. Unless they've seen it in the news.

2 Q. In document B, on page 3, No. 13, you talk
3 about your W-2 for 2013, and that covers your employment
4 with New Amsterdam Management, or no?

5 A. No. In 2013, I was still a police officer.

6 Q. Okay. Did you get a W-2 from New Amsterdam
7 Management for 2014? You were working there from
8 October, right?

9 A. October 2014, no, I was not working for them.
10 I believe I was working for them -- I did get a W-2, but
11 I don't think it was 2014.

12 Q. I'm sorry. It would be 2015. Right.

13 A. I believe so.

14 Q. Were you employed in 2014; just the job as
15 assistant property manager?

16 A. No.

17 MR. SINGLETON: Well, I call for the
18 production of W-2s and tax returns for 2014 to the
19 present, continuing demand.

20 Let's mark this.

21 (Whereupon, the following document was marked
22 as Defendant's Exhibit N for identification as of
23 this date by the Reporter.)

24 BY MR. SINGLETON:

25 Q. I'll show you what I've marked as Defendant's

D. ATTALI

1 Exhibit N, and it's a copy of the stipulation and
2 confidentiality order entered in this case.

3 Have you seen this before?

4 A. Not to my recollection.

5 Q. Are you aware that we've marked certain
6 documents here? And you'll see labels on them, various
7 documents say "confidential."

8 A. Yes.

9 Q. Are you aware that there is a confidentiality
10 order and that you're bound by and you cannot share that
11 information with anyone?

12 A. Yes.

13 Q. Okay. Thank you.

14 I want to direct your attention to Plaintiff's
15 Exhibit 14.

16 A. Thanks.

17 Q. Do you recognize what is collected as
18 Exhibit 14? Do you recognize it as text messages that
19 came from -- that came from you?

20 A. Yes.

21 Q. Now, on the first page -- this is a text
22 message dated January 27th, 2013, at 4:10 a.m. And it
23 says, "Boo. How do you spell Brooks? LOL." And it
24 indicates that you responded, a minute later, with
25 comment "N-GGR."

D. ATTALI

1 Is that a text you sent?

2 A. Yes.

3 Q. And Brooks is an African-American officer?

4 A. Yes.

5 Q. And given your sensibilities and feelings
6 about people hurling remarks against you, did you think
7 it's appropriate to call an African-American a nigger?

8 MR. AVALLONE: Note my objection.

9 A. No. That's why I didn't.

10 Q. That doesn't mean "nigger"?

11 A. It does, but I did not feel comfortable
12 writing that. The reason why Collazo had texted me
13 this, "Boo. Yo, how do you spell Brooks? LOL,"
14 obviously, he knows how to spell Brooks because he
15 spelled it right there. The night or two nights before
16 this text, as I was telling you, at the FOD I have a big
17 board behind me. Now, the board is cut up into a lot of
18 little squares with certain equipment listed and blank
19 spots and cars and equipment.

20 So Collazo had came in and he is standing at
21 the FOD. He says, "Attali, you spelled Brooks' name
22 wrong." I said, "How so?" He took the eraser, erased
23 Brooks' name next to whatever Taser it was put up to,
24 and he wrote N-I-G-G-E-R. So he put down the marker and
25 left. I erased it, put Brooks' name back up there.